

COMPLIANCE BOARD OPINION NO. 03-12

July 24, 2003

*The Honorable Jennifer P. Dougherty
Mayor, City of Frederick*

The Open Meetings Compliance Board has considered your complaint that a quorum of the legislative branch of the City of Frederick violated the Open Meetings Act at a meeting on May 7, 2003. For the reasons stated below, the Compliance Board finds that the gathering was not a “meeting” under the Open Meetings Act, and, consequently, there was no violation.

I

Complaint and Response

The complaint alleged that on May 7, 2003, at a Frederick restaurant, three aldermen (Messrs. Lenhart, Hall, and Baldi) “met with Lt. Governor Steele and other select individuals to specifically discuss City business in violation of the Open Meetings Act.” The complaint included a copy of an e-mail message, dated May 6, stating that the “principal subject of [the meeting] is the past, present, and future of the downtown City of Frederick.”¹ The complaint contended that those at the meeting “engaged in dialogue regarding the conduct of public business – present and future.” Elements of the discussion, it is said, referred to “specific matters within the jurisdiction of the public body that are, or foreseeably will be, before the Board of Aldermen, including the City’s current water crisis.”

According to the complaint, although a reporter attended the meeting, the public was not invited to attend, nor were the Mayor or other aldermen. In addition, the complaint suggested, without elaboration, that proper notice of the meeting had not been given.

¹ The e-mail, addressed to a number of individuals in addition to the three aldermen, was written by Mr. Robert Smariga, the Legislative Coordinator for the Frederick County Chamber of Commerce.

In a timely response on behalf of the City of Frederick, Chief Legal Services Officer Heather Price Smith contended that the May 7 gathering did not violate the Open Meetings Act. The response provided the following additional information about the May 7 gathering:

An aide to Lt. Governor Steele contacted Alderman Lenhart on May 1, 2003, confirming that the Lt. Governor would be visiting Frederick. The aide stated that among other things, the Lt. Governor would like to meet with the business community during his visit. Alderman Lenhart responded that he would contact the Frederick County Chamber of Commerce and request that the Chamber organize a meeting for the Lt. Governor with the Frederick business community. In response, the Frederick County Chamber of Commerce organized a small reception at a downtown restaurant for May 7, 2003. Aldermen Lenhart, Hall and Baldi attended this gathering with Lt. Governor Steele and downtown business leaders.

With respect to the nature of the discussion at the meeting, the response noted that the Chamber of Commerce President, Mr. Joe Lebherz, acted as “the moderator for an informal discussion between Lt. Governor Steele and the attendees Topics of discussion included water supply, the East Street and I-70 projects, Hope VI grant and project, procurement policies, the Main Street program, and technology.” All three aldermen in attendance reported, according to the response, “that they did not speak during the meeting, other than to introduce themselves and similar conversational exchanges, and that they did not participate in the consideration of any public business.” The response included a letter from Mr. Lebherz confirming that the three aldermen in attendance did not speak during the meeting, except when initially introducing themselves. Under these circumstances, the response argued, the May 7 gathering was not a “meeting” subject to the Open Meetings Act.

II

Analysis

The factual circumstances of the May 7 gathering – its origins in a request from Lt. Governor Steele, the organizing role of the Chamber of Commerce, and the role of moderator assumed by the Chamber’s president – are convincing evidence that the gathering was not planned as a meeting of the Board of Aldermen. Rather, in its inception it was akin to the kind of civic group forum that the Court of Appeals has held not to be subject to the Open Meetings Act. *City of New Carrollton v. Rogers*, 287 Md. 56, 71 (1980). Alternatively, it might be seen as similar to a

political gathering, to which the Act also does not apply. *Ajamian v. Montgomery County*, 99 Md. App. 665, *cert. denied*, 334 Md. 631 (1994). These types of gatherings, even if a quorum of a public body is present, are generally to be classified as social gatherings or other occasions that are not intended to circumvent the Act. §10-503(a)(2).²

Of course, what starts out as a gathering not subject to the Act might become a “meeting” under the Act, if a quorum of members of a public body use the occasion to “convene ... for the consideration or transaction of public business.” §10-502(g). As we discussed in a recent opinion, the key point will often be the actions of the public body members when an item related to public business comes up for discussion. On the one hand, if the public body members do not themselves participate in a give-and-take discussion about a matter related to public business, then no “meeting” of the public body will have occurred. On the other hand, if the members do participate actively, then they will have “convened” a meeting subject to the Act at that point. Compliance Board Opinion 03-6 (May 13, 2003).

The gathering on May 7 unquestionably involved matters of public business. But so did the civic association forum held in the *City of New Carrollton* case not to be subject to the Act. So, likewise, did the party central committee meeting held not to be subject to the Act in *Ajamian*. Hence, the determinative point is not whether a quorum was present or whether matters related to public business arose in discussion, but whether the members constituting the quorum engaged in the discussion themselves.

In this case, there is no evidence that the three aldermen did. To the contrary, they asserted that they did not, and the moderator at the gathering confirmed this account. The May 7 gathering, therefore, never lost its character as an occasion not subject to the Act. Because the Act did not apply, the organizers of the event had no obligation to provide notice to the public or to invite members of the public to observe.

² All statutory references in this opinion are to the State Government Article, Maryland Code.

III**Conclusion**

The Open Meetings Compliance Board finds that the gathering on May 7, 2003, involving Lt. Governor Steele, representatives of the Frederick business community, and three members of the Board of Aldermen was not subject to the Open Meetings Act. The aldermen's attendance at the meeting did not violate the Act.

OPEN MEETINGS COMPLIANCE BOARD

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